

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

LEO WINSTON REISSETTER

CASE NO. 07-02077

Debtor

MOTION FOR TURNOVER OF
ADEQUATE PROTECTION PAYMENTS

COMES NOW, Bayview Loan Servicing, LLC by and through its counsel of record, Michael J. Cunningham and in support of its Motion for Turnover of Adequate Protection Payments states to the Court as follows:

1. On October 4, 2007 the Court which provided “Debtor shall make adequate protection payments in the amount of \$1,298.64 to the Chapter 13 Trustee beginning Monday October 15, 2007 and continuing thereafter on the 15th day of each succeeding month until payments commence pursuant to a confirmed plan or until the automatic stay discussed in paragraph two (2) of the order is terminated.”
2. The October 4, 2007 order further provided “The Chapter 13 Trustee shall not distribute the adequate protection payments to Bayview unless and until the state court decree is affirmed on final appeal.”
3. The Iowa Court of Appeals issued its decision affirming the Marshall County District Court on June 25, 2008. A copy of the Decision by the Iowa Court of Appeals is attached hereto labeled Exhibit 1 and by this reference made a part hereof.
4. No petition for rehearing was filed with the Iowa Court of Appeals “within seven days after the filing of an opinion by the court of appeals” as required by Iowa Rule of Appellate Procedure 6.28; nor was an application for further review of a court of appeals decision filed with the Iowa Supreme Court within 20 days as required by 602.4102(4), Code of Iowa.

5. The affirmation of the trial court by the Iowa court of Appeals on June 25, 2008 is now a final decision entitling Bayview Loan Servicing, LLC to the adequate protection payments in the hands of the Chapter 13 Trustee.
6. On July 17, 2008 the Debtor voluntarily dismissed his Chapter 13 proceeding but the court has retained jurisdiction to "reconsider the Creditor's request for turnover of said payments" in its order of June 26, 2008.

WHEREFORE, Bayview Loan Servicing, LLC prays that the Court enter an Order directing the Chapter 13 Trustee to turnover the adequate protection payments paid by the Debtor, to the undersigned as counsel for Bayview Loan Servicing, LLC pursuant to the October 4, 2007 order.

HOWE, CUNNINGHAM, LOWE & KELSO, P.L.C.

By/s/ Michael J. Cunningham

Michael J. Cunningham, IS9999061
2824 104th Street
Urbandale, Iowa 50322
(515) 278-4200

ATTORNEYS FOR BAYVIEW LOAN
SERVICING, LLC f/k/a INTERBAY FUNDING,
LLC

Certificate of Service

The undersigned hereby certifies, under penalty of perjury, that a copy of the instrument to which this Certificate is attached was served electronically and/or mailed via the United States mail with postage fully paid on July 18, 2008 to the parties displayed below.

/s/ Michael J. Cunningham

Michael J. Cunningham

Copies to:
Office of the U.S. Trustee
Room 793, Federal Bldg.
210 Walnut Street
Des Moines, Iowa 50309

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